

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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HOUSTON CASUALTY COMPANY,

Index No.:

Plaintiff,

-against-

SUMMONS

TRAVELERS INDEMNITY COMPANY OF
CONNECTICUT,

Defendant.

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YOU ARE HEREBY SUMMONED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve copies of your answer upon the undersigned attorneys for the Plaintiff, HOUSTON CASUALTY COMPANY, within twenty (20) days after service of this Summons and Complaint, exclusive of the day of service, or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York, and in case of failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Northport, New York
March 5, 2021

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.
Attorneys for Plaintiff

By:

PATRICIA A. O'CONNOR
7 Bayview Avenue
Northport, New York 11768
(631) 261-7778
File No.: HC 19-445 PO

TO: TRAVELERS INDEMNITY COMPANY OF CONNECTICUT
VIA THE NYS DEPARTMENT OF FINANCIAL SERVICES
One Tower Square
Hartford, CT 06183-1051
NAIC#25682

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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HOUSTON CASUALTY COMPANY,

Index No.:

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

TRAVELERS INDEMNITY COMPANY OF
CONNECTICUT,

Defendant.

-----X

Plaintiff, HOUSTON CASUALTY COMPANY (hereinafter referred to as “HCC” or “Plaintiff”), by its attorneys, BRODY, O’CONNOR & O’CONNOR, ESQS., states the following as and for its Complaint against TRAVELERS INDEMNITY COMPANY OF CONNECTICUT (hereinafter referred to as “TRAVELERS” or “Defendant”):

NATURE OF THE ACTION

1. In this action, Plaintiff, HCC, seeks a declaration that Defendant, TRAVELERS, is obligated to defend and indemnify HP EBENEZER PLAZA HOUSING DEVELOPMENT FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ, a joint venture between PROCIDA CONSTRUCTION CORP. and ALVIN H. BUTZ, INC. (hereinafter PROCIDA-BUTZ) in connection with an alleged accident and resulting underlying action filed by Kelvin Veras and to reimburse HCC for past defense costs incurred on behalf of HP EBENEZER PLAZA HOUSING DEVELOPMENT FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ in connection with that underlying action.

PARTIES

2. At all times hereinafter mentioned, HCC was and is a foreign corporation with its principal place of business in Houston, Texas and is licensed and authorized to do business in the State of New York, including the issuance of insurance policies in the State of New York.

3. At all times hereinafter mentioned, TRAVELERS was and is a foreign corporation with its principal place of business in Hartford, Connecticut and is licensed and authorized to do business in the State of New York, including the issuance of insurance policies in the State of New York.

INSURANCE POLICIES

4. TRAVELERS issued Commercial General Liability policy to its insured, TT MECHANICAL CORP. under policy number DT-CO-0K753572-TCT-18 for the policy period November 25, 2018 to November 25, 2019 (“TRAVELERS POLICY”).

5. The TRAVELERS POLICY provides coverage for bodily injury that takes place during the policy period and is caused by an accident.

6. HP EBENEZER PLAZA HOUSING DEVELOPMENT FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ qualify as additional insureds under the TRAVELERS POLICY on a primary, non-contributory basis.

BACKGROUND

7. On June 22, 2018, HP EBENEZER PLAZA HOUSING FUND COMPANY, INC. as Titleholder, and EBENEZER PLAZA OWNER LLC, as Beneficial Owner, entered into a contract with PROCIDA-BUTZ, as Contractor, for the construction of a residential apartment building (“the premises”).

8. On September 18, 2018, TT MECHANICAL CORP. entered into a subcontract for plumbing and sprinkler work in connection with the construction of the premises.

9. Under Article 11 of that subcontract, TT MECHANICAL CORP. agreed to defend, indemnify and hold harmless HP EBENEZER PLAZA HOUSING FUND COMPANY, INC. and EBENEZER PLAZA OWNER LLC, as owner, and PROCIDA-BUTZ, as contractor, from and against any claims, costs, expenses, or liability attributable to bodily injury caused by, arising out of, resulting from, or occurring in connection with the performance of TT MECHANICAL CORP.'s work under the subcontract.

10. Under Article 12 and Exhibit A "Insurance Requirements" of that subcontract, TT Mechanical Corp. agreed to purchase and maintain Commercial General Liability insurance containing a Blanket Written Contractual Liability endorsement covering all Indemnity Agreements, including the Sub-Contract, Article 11 "Indemnification" provision.

11. Under Article 12 and Exhibit A "Insurance Requirements" of that subcontract, TT Mechanical Corp. agreed to purchase and maintain Commercial General Liability insurance on which HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ were named as additional insureds on a primary and non-contributory basis.

UNDERLYING LITIGATION

12. On or about September 6, 2019, a lawsuit entitled *Kelvin Veras v. HP Ebenezer Plaza HDFC, Inc., Ebenezer Plaza Owner LLC, and Procida Construction Corp.*, was commenced in the Supreme Court of the State of New York, County of Bronx, under Index Number 320455/2019E ("underlying action"). A copy of the initial Summons and Complaint can be viewed as Document 1 on the NYSCEF filing system. A copy of the plaintiff's Amended Complaint can be viewed as

Document 44 on the NYSCEF filing system.

13. In the underlying action, Kelvin Veras alleges that on August 8, 2019, while engaged in his employment at the premises, he was caused to be injured.

14. Kelvin Veras was an employee of TT MECHANICAL CORP. on August 8, 2019.

15. Kelvin Veras asserts causes of action based upon negligence and alleged violations of Labor Law §§200, 240(1), and 241(6).

TENDERS

16. On October 15, 2019, HCC tendered PROCIDA-BUTZ's defense and indemnity in the underlying action to TRAVELERS under policy DT-CO-0K753572-TCT-18.

17. By letter dated November 11, 2019, TRAVELERS denied coverage for PROCIDA-BUTZ under policy DT-CO-0K753572-TCT-18, improperly concluding that the plaintiff's injuries were not caused by the work performed by its insured, TT Mechanical Corp.

18. On January 19, 2021, HCC tendered HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ's defense and indemnity in the underlying action to TRAVELERS under policy DT-CO-0K753572-TCT-18.

19. By letter dated February 17, 2021, TRAVELERS denied coverage for HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ under policy DT-CO-0K753572-TCT-18, improperly concluding that there is no evidence that the damages being alleged were caused by TT Mechanical Corp.'s work.

20. TRAVELERS has shown a disregard for the rights of its insureds.

21. TRAVELERS has improperly failed to defend and indemnify its insureds, HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ in the underlying action.

22. TRAVELERS is estopped from denying coverage to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ and has waived all potential coverage defenses.

23. HCC has been forced to defend HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ in the underlying action and has incurred defense costs and expenses because of TRAVELERS' refusal to abide by its contractual obligations to defend, indemnify, and provide additional insured coverage to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ.

24. An actual controversy exists between HCC and TRAVELERS with respect to TRAVELERS' duty to defend, indemnify, and provide additional insured coverage to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ in connection with the underlying action.

25. HCC has no adequate remedy at law.

FIRST CAUSE OF ACTION - DUTY TO DEFEND

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 25 as if fully set forth herein.

27. The TRAVELERS POLICY was in full force and effect on August 18, 2019.

28. All terms and conditions of the TRAVELERS POLICY have been complied with and met.

29. The subject accident and underlying action fall within the coverage afforded by the TRAVELERS POLICY.

30. The TRAVELERS POLICY contains an endorsement that provides additional insured coverage to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ on a primary and noncontributory basis for claims of bodily injury in connection with TT Mechanical Corp.'s work.

31. Kelvin Veras' claims in the underlying action against HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ are based upon injuries he suffered in connection with TT Mechanical Corp.'s work.

32. TRAVELERS must provide a defense on a primary and noncontributory basis to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in the underlying action.

33. HCC is entitled to a declaration that TRAVELERS has a duty to defend HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in connection with the subject accident and underlying action and to reimburse HCC for past defense costs and expenses incurred in defending HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ.

AS AND FOR A SECOND CAUSE OF ACTION - DUTY TO INDEMNIFY

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 33 as if fully set forth herein.

35. The TRAVELERS POLICY was in full force and effect on August 18, 2019.

36. All terms and conditions of the TRAVELERS POLICY have been complied with and met.

37. The subject accident and underlying action fall within the coverage afforded by the TRAVELERS POLICY.

38. The TRAVELERS POLICY contains an endorsement that provides additional insured coverage to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ on a primary and noncontributory basis for claims of bodily injury in connection with TT Mechanical Corp.'s work.

39. Kelvin Veras' claims in the underlying action against HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC, and PROCIDA-BUTZ are based upon injuries he suffered in connection with TT Mechanical Corp.'s work.

40. TRAVELERS must provide indemnity on a primary and noncontributory basis to HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in the underlying action.

41. HCC is entitled to a declaration that TRAVELERS has a duty to indemnify HP EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in connection with the subject accident and underlying action.

AS AND FOR A THIRD CAUSE OF ACTION - CONTRIBUTION

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41 as if fully set forth herein.

43. The TRAVELERS POLICY was in full force and effect on August 18, 2019.

44. All terms and conditions of the TRAVELERS POLICY have been complied with and met.

45. The subject accident and underlying action fall within the coverage afforded by the TRAVELERS POLICY.

46. TRAVELERS is obligated to defend and indemnify EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in the

underlying action.

47. TRAVELERS has breached its obligations by refusing to defend and to indemnify EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in the underlying action and in failing to provide them with additional insured coverage in the underlying action.

48. As a result of TRAVELERS' breach of its obligations, HCC has been required to incur defense costs that should have been incurred by TRAVELERS and continues to do so.

49. HCC has suffered and will continue to suffer damages on account of TRAVELERS' refusal to fulfill its obligations under the TRAVELERS policy in connection with the underlying action.

50. TRAVELERS is liable for any and all damages by virtue of its breach of its obligation to defend and to indemnify EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ and provide them with additional insured coverage in connection with the underlying action, including paying past defense costs and ongoing costs and fees and expenses for defense and/or indemnity.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment:

a. Declaring that TRAVELERS has a duty to defend and to indemnify EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ on a primary noncontributory basis in connection with the subject Kelvin Veras accident and the underlying action and to reimburse HCC for past defense costs and expenses;

b. Awarding HCC all damages incurred by virtue of TRAVELERS' breach of its obligation to defend and indemnify EBENEZER PLAZA HOUSING FUND COMPANY, INC., EBENEZER PLAZA OWNER LLC and PROCIDA-BUTZ in connection with the underlying action;

and

c. Awarding attorneys' fees, costs, prejudgment interest and such other and further relief as to this Court may seem just and proper.

Dated: Northport, New York
March 5, 2021

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.
Attorneys for Plaintiff

By:

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